

Applicant : Ernest R. Chacon  
Appl. No. : 10/638,159  
Examiner : Helen OK Chu  
Docket No. : 13710-4001

### Remarks

Reconsideration of the application as amended herein is respectfully requested. Applicant points out that a typographical error occurred in its last response regarding Claim 17. On page xx, Applicant stated, "The battery storage apparatus of claim 15..." when it should have stated "The battery storage apparatus of claim 14." Appropriate amendment has been made herein. Applicant apologizes for any inconvenience this typographical error may have caused.

### 35 U.S.C. 112 Rejection

Examiner rejects Claims 7, 8 and 14-17 under 35 U.S.C. 112 because the term "batteries of known dimensions" is used in the claims while "in the specification the inventor uses cylindrical batteries." Office Action at ¶ 6. (The Examiner previously stated in the June 6 Office Action at ¶ 4: "in the specification the inventor uses AA batteries.") Applicant has amended claims 7, 8 and 14-17 to delete the limitation "batteries of known dimensions" but nonetheless respectfully traverses this rejection. Applicant stated in the specification that "another aspect of the various embodiments disclosed herein to provide a battery housing apparatus having a wide variety of sizes to accommodate a range of battery needs." At paragraph [0010], Applicant also noted "another aspect of the various embodiments disclosed herein to provide a battery housing apparatus for Alkaline, NiCad, Lithium Ion, or Nickel-Metal Hydride batteries, as well as for other developing battery chemistries, regardless of their shape or size." (emphasis added.) At paragraph [0014], Applicant stated "To quickly identify the type of battery and service life left, the sleeves can be color-coded." (emphasis added.) Applicant also stated at paragraph [0031] that the dimensions of the sleeves may vary for "different sizes and shapes of batteries." (emphasis added.) As is seen, Applicant respectfully submits that these and other descriptions in the specification make it clear that Applicant has not limited the term "batteries of known dimensions" to AA or cylindrical batteries. Applicant respectfully submits that the specification does not limit the type of batteries that can be used in any way. The drawings illustrate the various

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embodiments described in the specification by showing AA batteries. However, as seen from the written description of the specification, the present application repeatedly states that different types of batteries (with different sizes and shapes) can be used and are not limited to cylindrical batteries.

Examiner also rejects Claims 13 and 22 under 35 U.S.C. 112 because the phrase "batteries are accessible to a user for any purpose" can mean an unlimited amount of possibilities. Office Action at ¶ 6. Applicant has amended claims 13 and 22 to delete the limitation "for any purpose" to address the Examiner's concern. No further comment is deemed necessary.

### **35 U.S.C. § 102 Rejection**

Examiner rejects Claims 7-12 and 14-21 as being anticipated by Takeno et al. (U.S. Patent No. 6,428,925). Office Action at ¶ 10. Applicant respectfully traverses this rejection because the Takeno et al. reference does not teach several limitations found in claims 7-12 and 14-21. While the Examiner states the Takeno et al. reference "illustrates the length of the bottom sleeve is approximately the length of the exposed batteries and the length of the top sleeve is shorter than the length of the batteries," Office Action at ¶ 10, this is not accurate. The Takeno et al. reference discloses a bottom case that is sealed with a lid. See, e.g., Col. 4, lines 47-49 ("A top opening of the case 2 that is stored with the battery cells 1 or the top portion of the cell storage space is closed by means of a lid 4.... The battery cells 1 are sealed between the case 2 and the lid 4 ..."); Col. 5, lines 3-4; Col. 7, lines 26-28; Col. 8, lines 52-59. The Examiner also states "the batteries are still accessible [in Takeno et al.] to one of ordinary skill in the art because one would have to unscrew the screws to gain access." Office Action at ¶ 6. There are no screws disclosed in Takeno et al.; instead, the specification recites numerous times that the two "sleeves" are sealed together, inherently implying the batteries are not meant to be accessible at all. See, e.g., Col. 4, lines 47-53; Col. 5, line 4 and line 62 ("bonded to each other"). This is different than amended Claims 7-12 and 14-17, which require that the sleeves not be sealed at all with the added language: "said first non-conductive sleeve and said second non-

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conductive sleeve being in a non-sealed relationship with each other.” Claims 14 and 16 have only one sleeve, in which case it would not be sealed since the sleeve has an open end to insert or retrieve the battery. Claim 17 has two sleeves, but already makes clear that the second sleeve is shorter than the exposed end of the battery inserted in the first sleeve, and therefore the two sleeves cannot be sealed when they are so far apart.

The Examiner also states “the Takeno et al. reference discloses air apertures that pass through the first and second sleeve.” Office Action at ¶ 10 (citing Fig. 2, Component 6 and Fig. 9, Component 44; Column 5, Lines 11-19). Applicant respectfully submits that there are no “air apertures” in Takeno et al. but instead a completely hollow space – much like a donut hole. See, e.g., Figs. 1-8; claim 1 (“...and a central space as a hollow surrounded by the inner wall portion and penetrating the trough from top to bottom...”). Amended Claims 9 and 10, and 11-12, require air apertures in the sleeves at the terminal end themselves, given that the sleeves are meant to fit the battery snugly unlike in Takeno et al., where the figures show space between the batteries in the case. All independent Claims (Claims 7, 8, 14 and 15) have been amended to reflect that the sleeves are “adapted to snuggly fit” over the batteries. Moreover, amended Claims 9 and 10 illustrate that the air apertures are “adapted to substantially prevent conductive items from contacting the terminals on said battery.” Claims 11-12 and 20-21 require that the aperture have “a diameter smaller than a diameter of a battery terminal, thereby impeding contact with a battery terminal.” These limitations are not disclosed in Takeno et al. Takeno is exactly the opposite of what is claimed because the battery terminals in Takeno et al. are purposefully exposed so that “the electrode leads are exposed for external connection.” Col. 2, lines 38-40, and lines 45-49; see also, e.g., Col. 8, lines 32-51; Col. 4, line 52; see also Fig. 9 member 11 (“connecting plate”).

### **35 U.S.C. § 103 Rejection**

Examiner rejects Claims 7-12 as being unpatentable over Nishiyama et al. (U.S. Patent No. 6,174,618) under 35 U.S.C. 103(a). Office Action at ¶ 13.

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Nishiyama et al., however, teaches away from what the Examiner explains as the basis for the rejection: that “it would have been obvious matter of design choice to make the length of the battery holder longer so that it would protect the battery, since such a modification would have involved a mere change in size of a component.” Office Action at ¶ 13. The Examiner cites to MPEP 2144.04 (IV) in stating that a change in size is generally recognized as being within the level of ordinary skill in the art. Office Action at ¶13. However, the cases cited in that section of the MPEP do not support the Examiner’s statement because none of those cases dealt with a prior art reference that actually taught away from the change in size. In Nishiyama et al., the inventor first described the prior art as not sufficiently dissipating heat during discharging because the battery holder was substantially hermetically sealed. The inventor explained:

In the prior art battery holder, however, each cylindrical battery is surrounded by the frame and both ends are covered by the covers so that the interior of the holder is substantially hermetically sealed, and hence heat generated from the cylindrical batteries during the discharging or charging process cannot be sufficiently dissipated to the exterior. This produces a problem in that the temperature of the cylindrical batteries may be raised to a level higher than the specified range.

Nishiyama et al., Col. 1, lines 50-58. Thereafter, the inventor in Nishiyama et al. stated one of the aspects of the invention described therein was the “exposed side faces between the upper and lower support members...” Col. 7, lines 65-66. Thus, together with the prior art description, the Nishiyama et al. reference teaches away from making a “sleeve” or any other type of case or apparatus from fully covering the battery or batteries. Instead, the Nishiyama et al. reference is directed to a battery holder whereby the sides of the batteries are substantially exposed in order to help dissipate heat generated by charging or discharging the batteries. Thus, Applicant respectfully submits that it therefore would not have been obvious to simply extend the length of the “support members” of Nishiyama et al. because that reference teaches away from such an extension.

In Nishiyama et al., the invention is directed towards a battery holder that provides a conduit for discharging or charging the battery. See, e.g., Col. 2, lines 12-14,

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lines 33-35 ("...the paired positive and negative-terminal holes (2b) being communicated with each other through a groove..."), line 59; Col. 5, lines 30-35, lines 58-59, 63, 65-67. The method of "connecting" the batteries together is through "conducting plates" that are "made of a conductor." Col. 6, line 41. Claims 11 and 12 have been amended to clarify that the apertures are smaller in diameter than the battery terminal, "thereby impeding contact of conductive items with a battery terminal" to prevent accidental discharge.

The air apertures in Nishiyama et al. are in a different place than the apertures recited in Claims 9 and 10. In amended Claims 9 and 10, the apertures are "in the terminal end" of the non-conductive sleeve. In contrast, the air holes in Nishiyama et al. are not in the terminal ends of the support members. Instead, they are to the side, as shown in Fig. 8, 2d of that disclosure.

\* \* \*

Should the Examiner have any questions or comments on the application, the Examiner should feel free to contact the undersigned via telephone.

Please charge Orrick's Deposit Account No. **15-0665** for any fees required under 37 CFR §§ 1.16, 1.17 and 1.445.

Respectfully submitted,  
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